BEFORE
EDWIN H. BENN
ARBITRATOR

IN THE MATTER OF THE ARBITRATION

BETWEEN

VILLAGE OF RIVER FOREST

AND

ILLINOIS FRATERNAL ORDER OF POLICE LABOR COUNCIL

CASE NOS.: S-MA-19-132
FMCS 200408-05364
Arb. Ref.: 20.283
(Interest Arbitration – Arbitration of Discipline)

OPINION AND AWARD

APPEARANCES:

For the Village:	Benjamin E. Gehrt, Esq. Matthew D. Soaper, Esq.
For the Union:	Kimkea' L. Harris, Esq. Gary L. Bailey, Esq.
Place of Hearing:	Video
Date of Hearing:	January 26, 2021
Dates Briefs Received:	April 23, 2021 (Union) April 26, 2021 (Village)
Date of Award:	June 1, 2021

CONTENTS

I. BACKGROUND

This is an interest arbitration proceeding between the Village of River Forest ("Village") and the Fraternal Order of Police Labor Council ("Union" or "FOP") pursuant to the Illinois Public Labor Relations Act ("IPLRA") to set the terms of the parties' collective bargaining agreement ("Agreement") replacing their May 1, 2016 to April 30, 2019 contract.[1] The employees covered by the Agreement are full-time peace officers in the ranks of Patrol, Sergeant and Lieutenant.[2] A January 20, 2021 seniority list shows that there are approximately 23 employees covered by the Agreement.[3] The parties have had contracts going back to 1988.[4]

II. ISSUE IN DISPUTE AND THE PARTIES' POSITIONS

There is only one issue in dispute – arbitration of discipline.[5] All other issues have been resolved by the parties.[6]

As in the parties' prior contracts, under the 2016-2019 Agreement, disputes concerning discipline were excluded from coverage of the Agreement and were subject to the jurisdiction of the Village's Board of Fire and Police Commissioners ("BFPC").[7] The Union proposes to change the Agreement to give employees an option to have the

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[1] Village Exhibit 7; Union Exhibit 4.
The parties have waived the requirement for a tri-partite panel found in Section 14 of the IPLRA. Joint Exhibit 1 at par. 3.
This award contains hyperlinks to various websites. If viewed on a computer or other device and selecting a hyperlink does not work, copy and paste the link into a browser.

[2] Agreement at Section 1.1.

[3] Union Exhibit 3. The seniority list includes the Chief and a Commander (which have not been counted as members of the bargaining unit).

[4] Union Exhibit 8; Village Exhibit 8.

[5] Village Brief at 2; Union Brief at 1-2; Tr. 6, 13.

[6] Tr. 5-6.

[7] *See* Articles VII and XX of the 2016-2019 Agreement.

BFPC review disciplinary actions to be issued by the Chief or to have those disciplinary actions reviewed through the grievance and arbitration provisions of the Agreement.[8] The Village proposes maintaining the *status quo – i.e.,* discipline is to be reviewed only by the BFPC.[9]

III. DISCUSSION

The Union's proposal to provide for an election by the covered employees to have discipline reviewed by the BFPC or through the grievance and arbitration provisions of the Agreement is adopted.

First, Section 14(h) of the IPLRA provides that an interest arbitrator/arbitration panel "base its findings, opinions and order upon the following factors, as applicable."[10] However, in pertinent part, Section 8 of the IPLRA, provides in no uncertain terms the following [emphasis added]:

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[8] Union Brief at 4; Union Exhibit 2a.

[9] Village Brief at 4; Village Exhibit 1.

[10] The relevant portions of Section 14 of the IPLRA provide:

> (h) Where there is no agreement between the parties ... the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:
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> (1) The lawful authority of the employer.
> (2) Stipulations of the parties.
> (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
> (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
>
> (A) In public employment in comparable communities.
> (B) In private employment in comparable communities.
>
> (5) The average consumer prices for goods and services, commonly known as the cost of living.
> (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.

[footnote continued on next page]

> **Sec. 8. Grievance Procedure.** The collective bargaining agreement negotiated between the employer and the exclusive representative *shall* contain a grievance resolution procedure which shall apply to all employees in the bargaining unit and *shall provide for final and binding arbitration of disputes concerning the administration or interpretation of the agreement unless mutually agreed otherwise. ....*

The 2016-2019 Agreement (and previous contracts) did not provide for arbitration of discipline. Therefore, prior to this dispute, the parties "mutually agreed otherwise" and the requirement in Section 8 of the IPLRA that "[t]he collective bargaining agreement negotiated between the employer and the exclusive representative shall contain a grievance resolution procedure which shall apply to all employees in the bargaining unit and shall provide for final and binding arbitration of disputes concerning the administration or interpretation of the agreement" did not apply.

However, the Union now seeks to change the grievance process to include arbitration of discipline as an option. The parties have no longer "mutually agreed otherwise." Section 8 of the IPLRA therefore requires an arbitration provision for discipline.

There is no discretion in the language in Section 8 that once the parties have not "mutually agreed otherwise", then the Agreement "... *shall* contain a grievance resolution procedure which shall apply to all employees in the bargaining unit and *shall provide for final and binding arbitration of disputes concerning the*

[continuation of footnote]

(7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

administration or interpretation of the agreement ..." [emphasis added]. Under Section 8 of the IPLRA, the Union's position giving the employees the option to have discipline subject to the grievance and arbitration procedure must therefore be adopted.

Second, I have previously faced this issue (going back over 30 years) and I have required arbitration of discipline pursuant to the mandate in Section 8 of the IPLRA. *See* my awards in *City of Springfield and PBPA, Unit* 5, S-MA-89-74 (1990) at 1-5;[11] *City of Highland Park and Teamsters Local 714*, S-MA-219 (1999) at 9-12;[12] *Village of Lansing and FOP,* S-MA-04-240 (2007) at 16-21;[13] *Village of Maywood and Illinois Council of Police*, S-MA-16-119 (2017) at 2.[14]

Third, other arbitrators have reached similar results. *See e.g., Will County Board and AFSCME*, S-MA-009 (Nathan, 1988) at 56, 64-65;[15] *City of Markham and Teamsters Local 726*, S-MA-89-39 (Larney, 1989);[16] *Calumet City and FOP,* S-MA-99-128 (Briggs, 2000) at 13-16 (2000);[17] *City of Elgin and PBPA*, S-MA-00-102 (Goldstein, 2001) at 66-72;[18] *City of Markham and Teamsters Local 726,* S-MA-01-232 (Meyers, 2003) at 14-15;[19] *Village of Shorewood and FOP*, S-MA-07-199 (Wolff,

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[11] https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-89-074.pdf
[12] https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-98-219.pdf
[13] https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-04-240.pdf
[14] https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-16-119-02ArbAward.pdf
[15] https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-88-009.pdf
[16] https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-89-39.pdf
[17] https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-99-128.pdf
[18] https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-00-102.pdf
[19] https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-01-232.pdf

2008);[20] *Village of Western Springs and MAP*, S-MA-09-99 (Meyers, 2010) at 63-66;[21] *Village of Montgomery and MAP*, S-MA-10-156 (Camden, 2011) at 26;[22] *Village of Maryville and FOP*, S-MA-10-228 (Hill, 2011) at 10-12;[23] *Village of Oakbrook and FOP*, S-MA-09-017 (McAlpin, 2011) at 13-19;[24] *Village of Bolingbrook and MAP*, FMCS No. 101222-01003-A (Newman, 2011) at 9-10.[25]

Fourth, while the above analysis ends the dispute, I can take note that the Union's request for employees to have review of disciplinary actions submitted to arbitration is the policy of this State.

Section 2 of the IPLRA clearly states [emphasis added]:

> **Sec. 2. Policy**. ... To prevent labor strife and to protect the public health and safety of the citizens of Illinois, *all collective bargaining disputes* involving persons designated by the Board as performing essential services and those persons defined herein as security employees *shall be submitted to impartial arbitrators*, who shall be authorized to issue awards in order to resolve such disputes. *It is the public policy of the State of Illinois that where the right of employees to strike is prohibited by law, it is necessary to afford an alternate, expeditious, equitable and effective procedure for the resolution of labor disputes subject to approval procedures mandated by this Act*. To that end, the provisions for such awards *shall be liberally construed*.

The requirement for arbitration of disputes (which includes review of discipline) for employees involved in this dispute as found in Section 8 of the IPLRA is clear. And Section 2 of the IPLRA is similarly clear that "... *all collective bargaining*

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[20] https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-07-199.pdf
[21] https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-09-019.pdf
[22] https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-10-156.pdf
[23] https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-10-228.pdf
[24] https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-09-017.pdf
[25] https://www2.illinois.gov/ilrb/arbitration/Documents/101222-01003-A.pdf

disputes involving persons designated by the Board as performing essential services and those persons defined herein as security employees *shall be submitted to impartial arbitrators*, who shall be authorized to issue awards in order to resolve such disputes." [emphasis added]. Under Section 2, that requirement "... is the public policy of the State of Illinois ... necessary to afford an alternate, expeditious, equitable and effective procedure for the resolution of labor disputes subject to approval procedures mandated by this Act." If there is any doubt about the ability of the Union to have in its contract the ability to have arbitrators issue awards in disputes concerning discipline, Section 2's requirement "... for such awards *shall be liberally construed*" [emphasis added].

"... Illinois public policy is shaped by our statutes, through which the General Assembly speaks." *State of Illinois v. AFSCME*, 51 N.E.3d 738, 747 (2016). Through Sections 2 and 8 of the IPLRA requiring arbitration of disputes for the employees in this case, the General Assembly has clearly spoken. I take notice of the General Assembly's policy concerning the issue in this case.

The Union's position to allow employees the option to have discipline reviewed through the BFPC or arbitration therefore prevails.

IV. THE PARTIES' OTHER ARGUMENTS

Other arguments not addressed *supra* at III do not change the result.

First, the Village argues that this case is unique because the parties have an historical bargaining relationship – particularly on this issue (since the passage of the IPLRA); I have discretion and, as provided in the ground rules for this case, the parties agreed that I can select the Village's final offer to maintain the *status quo*.[26]

[26] Village Brief at 8-9; Tr. 8.

But there is no discretion in Section 8 of the IPLRA – "[t]he collective bargaining agreement negotiated between the employer and the exclusive representative *shall* contain a grievance resolution procedure which shall apply to all employees in the bargaining unit and *shall provide for final and binding arbitration of disputes concerning the administration or interpretation of the agreement unless mutually agreed otherwise*" [emphasis added]. Even assuming I had discretion as the Village argues, I would not exercise that discretion in light of that mandatory provision in Section 8 and my (as well as other arbitrators) over 30 years of deciding this issue consistent with the mandate requiring arbitration where the parities have not "mutually agreed otherwise" as stated in Section 8.

The Village cites to Section 4 of the IPLRA in support of its historical bargaining relationship argument.[27] Section 4 provides, in pertinent part:

> **Sec. 4. Management Rights**.
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> * * *
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> To preserve the rights of employers and exclusive representatives which have established collective bargaining relationships or negotiated collective bargaining agreements prior to the effective date of this Act, employers shall be required to bargain collectively with regard to any matter concerning wages, hours or conditions of employment about which they have bargained for and agreed to in a collective bargaining agreement prior to the effective date of this Act, except as provided in Section 7.5. ...

The general language in Section 4 which imposes bargaining obligations on issues "which they have bargained for and agreed to in a collective bargaining agreement prior to the effective date of this Act" does not change the result. The parties have bargained over this issue and have come to impasse. The impasse resolution

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[27] Village Brief at 8-9.

procedures established by the IPLRA now come into play. And Section 8's *specific* mandate for arbitration unless the parties have "mutually agreed otherwise" drives the result in this case. The parties have not "mutually agreed otherwise". Arbitration (as an option) is therefore required.

Second, the Village's argument that because the Union only viewed the arbitration option as a "good idea" is not a sufficient reason to change the result.[28]

The Village is correct that it is well-established that in application of the factors found in Section 14 of the IPLRA for consideration of changes to the *status quo* through the interest arbitration process, a "good idea" is not good enough to require a change – but the party seeking the change must show that any existing condition for which a change is sought is "broken". *See* my award in *City of Streator and FOP*, S-MA-17-142 (2018) at 18-19 ("In this conservative interest arbitration process, in order to change a *status quo* condition, there must be a showing by the party seeking the change that the existing *status quo* is broken" [citing my award in *Village of Barrington and FOP*, S-MA-13-167 (2015) at 5 and cases cited]).[29]

However, with Section 8's mandate for inclusion of arbitration in the Agreement driving this dispute, there is no need for the Union to show that the existing condition is broken. *See City of Springfield, supra* at 4:[30]

> ... While ordinarily the inability of a party seeking to make the change to demonstrate need for the proposed change carries great weight ... the statutory requirement for inclusion of arbitration supersedes that kind of consideration. ...

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[28] *Id*. at 10.

[29] *Streator* can be found at:
https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-17-142ArbAward.pdf
Barrington can be found at:
https://www2.illinois.gov/ilrb/arbitration/documents/s-ma-13-167.pdf

[30] https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-89-074.pdf

See also, my award in *Village of Lansing and FOP*, S-MA-12-214 (2014) at 40 (addressing the analogous mandate then found in Section 14(i) of the IPLRA governing that case that "... the arbitration decision ... may include residency requirements, but those residency requirements shall not allow residency outside of Illinois" [emphasis added]):[31]

> Just like the provisions in Section 8 of the IPLRA which mandate that an arbitration provision be awarded if requested by a party ("[t]he collective bargaining agreement negotiated between the employer and the exclusive representative shall contain a grievance resolution procedure which shall apply to all employees in the bargaining unit and shall provide for final and binding arbitration of disputes concerning the administration or interpretation of the agreement unless mutually agreed otherwise" [emphasis added]), *there is also no "show me it's broken" analysis that can be used* on this residency issue. Even if a fire and police commission has been functioning well for years with no problems for anyone involved, a party's request to have arbitration of grievances – made for whatever reason – must, as a matter of statute, be granted and placed into a contract through interest arbitration. So too, if a party asks for a residency provision which requires residency inside the State of Illinois, that request must also be granted.

If the IPLRA dictated what cannot be included in an interest arbitration award (*e.g.,* residency outside of the State of Illinois) and what must be included (here, arbitration, if requested), then there is no need for a party to "show me it's broken" to obtain the change sought. The statute leaves me no choice.

Third, therefore, because of the mandate in Section 8 to include arbitration if requested, the Village's argument that there is no evidence that the BFPC has been biased against the Union and that there has been no showing by the Union that the

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[31] https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-12-214.pdf

BFPC has acted with cronyism, patronage, favoritism, corruption or not being trustworthy cannot change the result.[32] *See City of Springfield, supra* at 4 (in light of the statutory mandate "... the fact that the Union could point to no specific problems with the present system is immaterial.").[33] *See also, the 2014 Lansing Award*, *supra* at 40 ("Even if a fire and police commission has been functioning well for years with no problems for anyone involved, a party's request to have arbitration of grievances – made for whatever reason – must, as a matter of statute, be granted and placed into a contract through interest arbitration.").[34] The Village represents that "... in the last 10 years not a single discipline case has come in front of the commission."[35] Even so, the mandate in Section 8 requires adopting the Union's position.

Fourth, the Village argues that granting the Union's request should not be allowed because the Union has not met the standards for imposing a breakthrough condition.[36] I disagree. That argument was rejected in the 2007 *Lansing Award* at 19 [footnote omitted]:[37]

> Granting the Union's proposal to include discipline as part of the grievance and arbitration procedure is not a "breakthrough" as the Village argues. Granting the Union's proposal on discipline is required by the Section 8 of the Act.

Fifth, the Village argues that its request to maintain the *status quo* should be granted because of the traditional factors used for analysis in Section 14(h) of the

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[32] Village Brief at 10-12.

[33] https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-89-074.pdf

[34] https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-12-214.pdf

[35] Tr. 10.

[36] Village Brief at 12.

[37] https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-04-240.pdf

Act.[38] Because of the mandate to include arbitration found in Section 8 of the IPLRA, that position has long been rejected. *See e.g.,* the 1988 award in *Will County Board, supra* at 56 [footnote omitted, underscore in original]:[39]

> As we interpret Section 8 of IPELRA, unless there is some exclusion mandated by law, or the parties otherwise mutually agree, the Agreement must contain a grievance and arbitration procedure covering all disputes concerning its administration or interpretation. Section 8 provides no exceptions. It is not necessary to argue the statutory criteria of Section 14{h) on the scope of a grievance procedure. Limitations on jurisdiction must arise as a result of other laws and not on the basis of Section 14(h) criteria.

Sixth, the Village is correct that the Union's reliance upon external comparables should not be considered.[40] For years I have been trying to point out to parties in these proceedings that external comparability (Section 14(h)(4)(A) of the IPLRA) should not be considered in interest arbitrations or in contract negotiations. *See e.g., Cook County Sheriff/County of Cook and AFSCME,* L-MA-13-005-008 (2016) at 38-52;[41] *Village of Swansea and FOP*, S-MA-16-213 (2018) at 19-21;[42] *Village of Flossmoor and FOP,* S-MA-17-193 (2019) at 4-15;[43] *City of Streator, supra* at 4-17;[44] and cases cited in those awards.

As discussed at length in those awards concerning comparability, the following is a summary of why external comparability should *not* be used:

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[38] Village Brief at 13-17.

[39] https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-88-009.pdf

[40] Village Brief at 16-17. *Compare* Union Brief at 4-6; Tr. 11; 17-20; Union Exhibits 8, 10-16.

[41] https://www2.illinois.gov/ilrb/arbitration/Documents/L-MA-13-005arbaward.pdf

[42] https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-16-213ArbAward.pdf

[43] https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-17-193ArbAward.pdf

[44] https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-17-142ArbAward.pdf

1. Section 14 of the IPLRA does not *require* external comparability to be considered because Section 14(h) only provides that "... the arbitration panel shall base its findings, opinion and order upon the follow factors, *as applicable*" [emphasis added]. If use of external comparability was required then the language would have read that "... the arbitration panel shall base its findings, opinion and order upon the follow factors: ~~as applicable.~~" The statute does not read that way.

2. There is no definition of "comparable communities" in Section 14; no guidance on how to pick them; and no guidance how to use them.

3. Contracts in external comparable communities have differing wage and benefit scales and different durations making rational comparisons impossible and meaningless. Percentage, median, averages and the like used for comparison purposes lead to differing numbers and results.

4. Because contracts expire at different times, the parties are forced to make comparisons to periods in contracts that have expired and for periods that have not yet been negotiated in the comparable communities. How can parties make comparisons to wages and benefits that do not exist?

5. If rankings are used, as contracts in the comparable communities expire before the contract between parties negotiating or arbitrating a new one, there is nothing for comparison purposes which skews rankings.

6. By making comparisons to periods in contracts that do not identically overlap the periods for the contract in dispute, cost of living changes in the different periods alters the actual buying power of wages and benefits paid in the different periods making comparisons irrelevant.

7. Parties in the comparable communities settle contracts for different reasons that have an impact on wage and benefit structures agreed to as trades on issues are made that are not relevant to other parties who are forced to accept the results from those comparable communities. For example, higher or lower economic packages may have come about in comparable communities as concessions are made to avoid layoffs; increases are granted to attract more qualified employees (or keep current employees from leaving);

to gain better or pay for increased insurance; to restructure scheduling; to catch up for prior concessions or wage freezes; to compress steps; etc. Those underlying reasons for structuring wage and benefit packages in the comparable communities may not exist in the community for which comparisons are sought and are therefore irrelevant comparisons.

8. As economic times change (recessionary periods, inflationary periods, etc.), comparisons over years to contracts in different periods are absolutely meaningless.[45]

9. And the results of misusing comparable communities as the basis for setting contract terms spread from community to community. As one community in negotiations or an interest arbitration has its contract's terms and conditions set by the results in other comparable communities which, in turn, were established based on communities who also had their contracts set on what happened in other communities, the irrational basis just keeps spreading because the comparability foundation upon which all of the contracts were based was just meaningless from the outset.

10. And *most* important, because they were not at the bargaining table when the comparable communities negotiated their contracts, the parties negotiating a contract or who are in interest arbitration for a new contract had absolutely *no* input into what went in the contracts in the comparable communities. And yet, the results of other negotiations or interest arbitration proceedings are *forced* upon parties trying to put together their contract that instead should be tailored to their specific needs and not some other communities' needs.

11. And at some point, unions will have to explain to their membership why they must take a lower wage or benefit package because of what happened in other communities and the members respond, "But we don't work in those communities". And similarly, elected officials and employer administrators will have to explain to taxpayers why they have to pay higher taxes (or experience decreased

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[45] There can be little doubt that contract negotiations and interest arbitrations that will be dealing with the current situation existing as a result of the crashed economy caused by the COVID-19 pandemic and the differing recoveries of various communities will prove to be most difficult.

> services) to pay for contracts because of what happened in other communities and the taxpayers respond, "But we don't live and pay taxes in those communities."

Try as I have to attempt to explain how useless, arbitrary and unfair that reliance upon external comparability is for setting contracts – especially because it is an irrelevant wild card that can hurt both sides and prevents parties from directly focusing upon their specific needs as the results from other communities are pounded into their contracts – examination of the Illinois Labor Relations Board's website which collects interest arbitration awards shows that parties and arbitrators continue to give *heavy* weight to external comparability.[46]

The use of external comparability to set contract terms is not required and just makes no sense. I have been deciding interest arbitrations for over 30 years and have issued over 100 interest awards.[47] And while I, like other arbitrators, started out long ago relying upon external comparability, giving heavy and often determinative weight to the product of other negotiations to decide a case always bothered me. Over the years and having had to deal with these problems, I came to the conclusion that external comparability is not an "applicable" factor for setting contracts in interest arbitrations. At the hearing, I explained:[48]

> ARBITRATOR BENN: I think for the benefit of those who are out there, the lawyers know I have kind of evolved over the years and in very simple terms external comparability is essentially the equivalent of allowing somebody else to set the terms of your contract. And isn't it better for the parties to set the terms of their own contract rather than having someone else do it? When you get the economic items,

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[46] https://www2.illinois.gov/ilrb/arbitration/Pages/default.aspx

[47] Those awards are all published at the State Labor Board's website. *Id.*

[48] Tr. 34-35.

> especially in times like this, you start looking around and it's going to cut both ways. Some municipalities will recover quicker than others depending when the recovery started and some may not. ...
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> * * *
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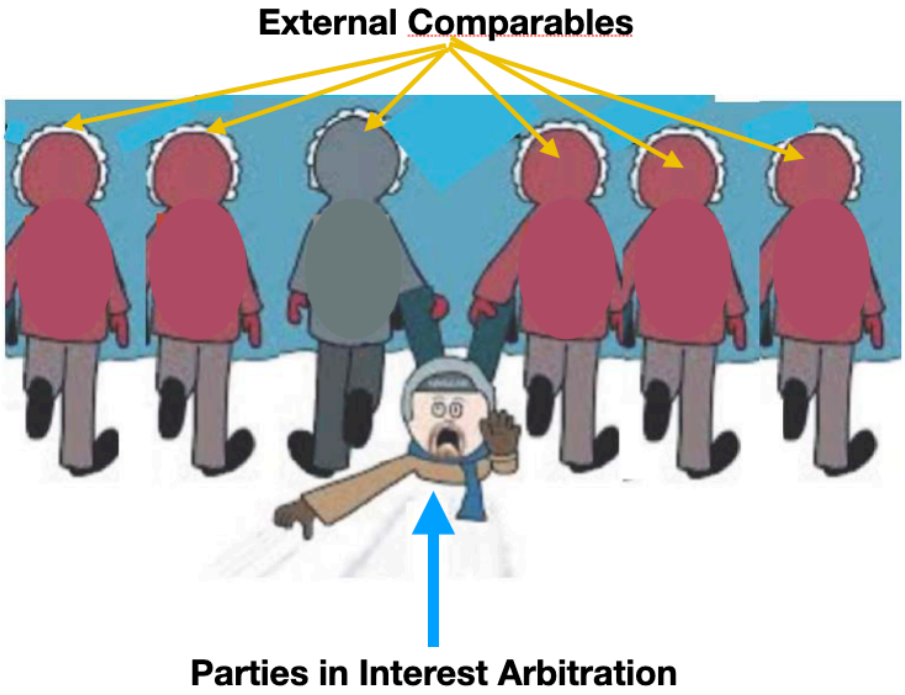
> ... So, again, external comparability whether it's economic or non-economic to me it's not helpful and it's not helpful to the parties because you are stuck with the product of somebody else's negotiations. ...

It really all comes down to this simple graphic that I have been using over the years to show people the absurd result of reliance upon external comparability:



All legalisms aside, that's just not right. Quite frankly, try as I have, while some parties have understood the message from their own experiences, because I am not sufficiently getting the message through to enough people involved in this process, I give up on trying to persuade the universe of labor and management in the

public sector that use of external comparability makes no sense – no sense at all. The result will just have to be that strangers will set the terms of parties' collective bargaining agreements and the parties will simply have to live with that – good or bad. Unions will have to fight lower wage and benefit results from comparable communities and employers will have to fight higher results from comparable communities. However, that will not happen through me. Because experience is the best teacher, as I have repeatedly stated before, my view on the topic has changed over the years and I do not use external comparability to set terms in collective bargaining agreements. It's been some 17 years since I last used external comparability to set a contract. *See County of Effingham and AFSCME*, S-MA-03-264 (2004).[49] And I have long been pointing out the problems. *See County of Lee and FOP*, S-MA-03-142 (2004) at 14-15:[50]

> The problem here is obvious. I am not satisfied that an "apples to apples" comparison can be made in this case. The FOP focuses on rankings, while the Employer focuses on averages. Further, the wage plans for the different counties are not the same as the ones under the Agreement and the impact of the wage proposals on the individual employees who fall within the various steps of the plans vary widely. Additionally, the time periods when the comparisons are made are not always similar to give a valid basis for comparisons, particularly when we are looking into future years when those other counties may be in negotiations for represented employees and it is just not known what the product of those negotiations will yield for the future years. Making these kinds of comparisons and trying to realistically look at the future and extrapolating valid wage comparisons is often as difficult as trying to catch a greased pig.

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[49] https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-03-264.pdf

[50] https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-03-142.pdf

But for the issue in this case – arbitration of discipline – my unsuccessful attempt to persuade against use of external comparables is not necessary. The statute does that for me. *See* the 2007 *Lansing Award* at 18 (because of the mandate in Section 8 of the IPLRA to include arbitration in collective bargaining agreements "[n]or is this issue subject to comparability considerations.")[51] *See also*, *City of Highland Park, supra* at 10-11 [emphasis in original]:[52]

> ... According to Section 8 of the Act, there must be an ability to appeal to arbitration over the "administration or interpretation of the agreement" which includes the provisions concerning discipline.
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> * * *
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> ... But these internal and external comparisons must be weighted against the clear mandate found in Section 8 of the Act that the Agreement "*shall* provide for final and binding arbitration of disputes concerning the *administration or interpretation* of the agreement". By excluding discipline — a provision of the Agreement found in Article 3.1 — from arbitration, I have not "provide[d] for final and binding arbitration of disputes concerning the *administration or interpretation* of the agreement". The City's comparability arguments therefore do not defeat the Union's position.

Seventh, the Union argues that there are the differences between arbitration and proceedings before the BFPC which makes use of arbitration as an option "more fair and just."[53] In light of the result in this case, that argument is moot.

Finally, I am cognizant that Ground Rule No. 11 negotiated by the parties provides that "[t]he Arbitrator shall base his findings and decision upon the applicable

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[51] https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-04-240.pdf

[52] https://www2.illinois.gov/ilrb/arbitration/Documents/S-MA-98-219.pdf

[53] Union Brief at 7-11.

factors set forth in Section 14(h) of the Illinois State Labor Relations Act."[54] My reliance upon the statutory mandate in Section 8 of the IPLRA is not contrary to the parties' agreement that I use Section 14(h).

Section 14(h)(1) provides the factor for consideration of "[t]he lawful authority of the employer." Section 8 of the IPLRA is crystal clear that, as a matter of statute, "[t]he collective bargaining agreement negotiated between the employer and the exclusive representative shall contain a grievance resolution procedure which shall apply to all employees in the bargaining unit and shall provide for final and binding arbitration of disputes concerning the administration or interpretation of the agreement unless mutually agreed otherwise." With the Union's request to include discipline as part of the grievance and arbitration provisions as an option, the parties have no longer "mutually agreed otherwise" to exclude arbitration of discipline and Section 14(h)(1) of the IPLRA – "[t]he lawful authority of the employer" – now requires inclusion of the arbitration provisions for discipline adopted by this award consistent with the statutory mandate found in Section 8 of the IPLRA.

V. PRIOR TENTATIVE AGREEMENTS

Prior tentative agreements reached by the parties are adopted as part of this award.

VI. REMAND FOR DRAFTING LANGUAGE

The Union proposed language for its proposal.[55] However, because the Village sought to maintain the *status quo*, the Village made no language proposal incorporating the option sought by the Union.[56] Given that arbitration for discipline is now

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[54] Joint Exhibit 1.

[55] *See* Union Exhibit 2a at 2-4.

[56] *See* Village Exhibit 1 at 1-3.

provided as an option, the Village should have the opportunity to jointly draft the language with the Union. This matter is now remanded to the parties for drafting of language consistent with the terms of this award. With the consent of the parties, I will retain jurisdiction to resolve disputes, if any, concerning drafting of such language.

VII. CONCLUSION AND AWARD

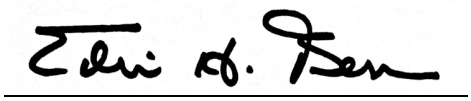
Section 8 of the Illinois Public Labor Relations Act provides in no uncertain terms that "[t]he collective bargaining agreement negotiated between the employer and the exclusive representative *shall* contain a grievance resolution procedure which shall apply to all employees in the bargaining unit and *shall provide for final and binding arbitration of disputes concerning the administration or interpretation of the agreement unless mutually agreed otherwise*" [emphasis added]. Although in the past the parties have "mutually agreed otherwise" and did not provide that the grievance and arbitration provisions of their contracts cover discipline, but instead discipline was reviewed by the Villages Board of Fire and Police Commissioners, now the Union no longer agrees to exclude discipline from the grievance and arbitration provisions of the collective bargaining agreement. The "unless mutually agreed otherwise" condition in Section 8 no longer exists. That being the case, Section 8 of the IPLRA *requires* ("The collective bargaining agreement negotiated between the employer and the exclusive representative ... shall provide for final and binding arbitration") that the grievance and arbitration provisions of the Agreement include review of discipline – here, if the employee elects to have such review. If the employee chooses otherwise, the BFPC can continue to review a particular disciplinary action as it had in the past.

My conclusion in this case follows over 30 years of prior interest arbitration awards on this issue coming to the same conclusion – four by me and eleven by other arbitrators. *See* discussion *supra* at III.

The Union's proposal to give employees an option to have the Village's Board of Fire and Police Commissioners review disciplinary actions to be issued by the Chief or to have those disciplinary actions reviewed through the grievance and arbitration provisions of the Agreement is therefore adopted.

This matter is now remanded to the parties for drafting of language consistent with the terms of this award. With the consent of the parties, I will retain jurisdiction to resolve disputes, if any, concerning drafting of such language.

In conclusion, the Union's proposal to add an option for discipline to be covered by the grievance and arbitration provisions of the Agreement is adopted.



Edwin H. Benn
Arbitrator

Dated: June 1, 2021